IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH

AT HYDERABAD

THURSDAY, THE TWENTY FOURTH DAY OF JUNE

TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

and

THE HON'BLE Ms. JUSTICE G.ROHINI

WRIT APPEAL NO : 890 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 18/03/2004 in W.P. No.11710 of 1993 on the file of the High Court.)

Between:

1 Mohd. Ghouse Modiuddin (Died)
2 Khaja Khamruddin (Died)
3 Fatima Bi W/o Mir Sultan Ali,
Owaisi colony, Santhoshnagar, Hyderabad.
4 Gafoor Unnisa , W/o Mohd. Ghouse Mohiuddin
R/o Bodangiparthi Chandur Mandal, Nalgonda District, AP
5 Khaluda Adeab, W/o Khaja Khamruddin
H.No. 6-2-836 Meerbagh Colony, Hyderabad Road,
Nalgonda District

(Appellants 4 and 5 were brought on record as LRs of the deceased appellants 1 and 23 as per Court Order in WPMP No.19568 of 2001 in W.P.No.11710 of 1993)

..... APPELLANTS

AND

1 Govt of AP., Rep. by its Secretary , Home Department AP. Secretariat, Hyd
2. Director General of Police Saifabad, Hyd
3. Commissioner of Police, Near City Civil Courts, Hyderabad.
4. Inspector of Police Karkhana P.S. Secunderabad
5. Chandra Rao, Inspector of Police Task Force, Central

Crime Station, Near Public Gardens, Hyderabad.

6. Goverdhan Reddy, SI of Police , Task Force, Central Crime Station, Near Public Gradens, Hyderabad.

7. Ajaya Kumar S.I. of Police ,
Task Force, Central Crime Station,
Near Public Gardens, Hyderabad.

8. Sivarama Krishna,
S.I.of Police, Task Force, Central Crime Station
Near Public Gardens, Hyderabad.

9. Varahalaraju , SI of Police Task Force,
Central Crime Station
Near Public Gardens, Hyderabad.

.....RESPONDENTS

For the Appellant : Mr. J.SATYA PRASAD, Advocate.

For the Respondents : GP FOR HOME

The Court Made the Following :

ORAL JUDGMENT: (Per Hon'ble the Chief Justice)

Appellants 1 and 2 had died and appellants 4 and 5 were brought on record as their legal representatives and petitioner No.3 is the appellant. All of them are being described hereinafter as 'petitioners'. Petitioners filed the writ petition in August, 1993 under Article 226 of the Constitution of India praying that in the facts and circumstances as mentioned in the writ affidavit, a direction be issued to respondents 2 and 3 to order prosecution against respondents 5 to 9 for causing death of Mohd. Fasiuddin, Khaja Rafiuddin and Mir Mohmood Ali on

21-06-1993 in the limits of Karkhana Police Station, Secunderabad, with further direction to respondent No.4 to register the crime against respondents No.5 to 9 under Section 302 of Indian Penal code for causing death of three persons in pursuance of Crime No.89 of 1993 registered by him on

21-06-1993 and to prosecute them in the court of law. Further direction is sought against respondent No.1 to pay an amount of Rs.10 lakhs each as compensation to the petitioners 3 to 5 for the

loss of lives of the deceased.

Learned single Judge dismissed the writ petition on the ground that during the pendency of the writ petition, final report was submitted in Crime No.89 of 1993 and the same was filed into court on 04-02-1995, *inter alia*, stating that the investigation revealed that on the intervening night of

20th/21st June, 1993 notorious wanted criminals i.e. the deceased persons (1) Mohd. Fasiuddin (2) Khaja Rafiuddin and (3) Mir Mohmood Ali, snatched the scooter from one Mohd. Ayub Khan in the limits of P.S. Balanagar and were going towards Mahalaxmi Motors (Workshop), Hasmathpet Road, Secunderabad. That

in spite of their signalling, all the deceased failed to stop and one of them wielded a sword and managed to escape. Immediately the Task Force police party chased the said scooter to apprehend them but a bomb was hurled at Task Force Police due to which two Constables fortunately escaped with minor injuries and

in spite of their warning to surrender, they did not hear and finally Task Force Police in self-defence had no other go, but opened fire at the criminals resulting in instantaneous death of all the deceased. Since all the three accused persons in the case died on the spot on 21-06-1993 the case was closed as action abated. The learned single Judge also observed that the final report has been accepted by XI Metropolitan Magistrate, Secunderabad, and thereafter, considering the submissions made by the learned counsel for the

appellants, learned single Judge held that there cannot be any direction at this stage for registration of a separate crime on the petitioners' version for the same incident and then re-open the entire case since there was remedy available to the petitioners to oppose the acceptance of final report or filing any objections for the acceptance of final report and seeking further investigation in Crime No.89 of 1993.

Learned counsel for the appellants before us reiterated the same arguments saying that Crime No.89 of 1993 was registered at the behest of police against the deceased, maybe for the same incident. But, it was not a crime registered as regards killing of three persons. Therefore, the order of learned single Judge deserves to be set aside and directions deserve to be issued to register a crime as regards killing of three persons by the police and then to direct the investigation to be carried on. He points out that it is not disputed by the police that killing of three persons did take place. Maybe, it is the version of police that in self-defence, they had to open fire, but that would not absolve the fourth respondent of his obligation to register the case of death of three persons and then carry out investigation in accordance with law. As such, according to the petitioners, the crime has remained uninvestigated thereby necessitating directions to be issued. In any case, he further submits that the petitioners could not have objected to the final report submitted in Crime No.89 of 1993.

We have duly considered the submissions made before us

by the learned counsel for appellants and gone through the record.

In the counter-affidavit filed by the respondents in the writ petition, the Inspector of Police, Commissioner's Task Force, Hyderabad, denied the petitioners' allegations further stating that the facts and circumstances clearly demonstrate that three persons were killed while the police returned the fire in

self-defence while in pursuit of arrest of wanted accused who were responsible for various heinous offences. Counter-affidavit further stated that three persons were involved in as many as

26 cases for various heinous offence registered at various police stations. A special party was constituted including the respondents to apprehend the deceased and their associates who were involved in a number of cases. The deponent further stated that he along with other officers persuaded the deceased to surrender, but instead of surrendering, one of the deceased threw a bomb at the police party. The splinters of the bomb caused injuries to two constables. Not being satisfied with that, they advanced towards police party and one of them was armed with revolver, another with a sword and the third with a bomb. The police party had no option but to open fire at the deceased in

self-defence resulting in the death of three persons. This incident led to the registration of Crime No.89 of 1993 for offence under Section 307 of Indian Penal Code, Sections 3 and 5 of the Explosive Substances Act, Sections 25 and 27 of the Indian Arms Act and Sections 3 and 4 of Terrorist and Disruptive Activities (Prevention)

Act of Police Station, Kharkhana. The Additional District Magistrate ordered magisterial enquiry which at that time was pending and that investigation in Crime No.89 of 1993 was also pending before the Investigating Agency and the Investigating Agency was making sincere efforts to arrest the accused.

Facts on record further reveal that magisterial enquiry was conducted by T.Y.Bhaskar Rao, Revenue Divisional officer, Hyderabad, and he opined that three persons when chased and apprehended by the Task Force tried to endanger the lives of the members of the Task Force instead of surrendering and even though opportunity was given by the Task Force, they went ahead with the offence against the party and in self-defence, the Task Force fired at them. This report dated

13th October, 1993 was accepted by the Government on

29-12-1993. As noticed above, the Investigating Agency submitted final closure report in 1995, which was accepted by the Magistrate concerned. Needless to add that the petitioners did not participate in the investigation as has been alleged, even after giving notice.

With respect to the incident, maybe on one of the versions, the FIR is registered, but the ultimate object of every investigation is to find out if any offences have been committed as regards the incident and if so, who has committed the said offence on different versions, which might be revealed during investigation. The task of

Investigating Agency is to find the real crime and the real culprit and it is for everyone involved in respect of that incident to participate in the investigation and provide whatever information is available with them to the investigating agency. This is also a fundamental duty of every citizen to come in the aid of the investigating agency. The petitioners were aware of the registration of the crime and were aware of the fact that the investigation was in progress. The
post mortem on the three bodies was also conducted during the process of the said investigation of crime. They could have very well participated in the investigation and provided the investigating agency their version and in case final report was submitted, they could have appeared before the concerned Magistrate and objected to the acceptance thereof and sought direction for further investigation or such other directions or finally prayed that the report be not accepted since it needs further investigation in the light of their version. In case the Magistrate would not have agreed, they were not remediless. They could have initiated appropriate proceedings and sought directions for re-opening of such enquiry or set aside the acceptance of the final report.

The learned single Judge, in our considered view, was justified in proceeding to hold that no direction as on today, after expiry of ten years can be issued in a case which stood closed in the year 1995. We fully agree with the reasoning in the said order and find no substance in the appeal, which is accordingly dismissed.

DEVINDER GUPTA, C.J.

G.ROHINI, J

24-06-2004
bsc
To

1. The Secretary , Home Department, Govt. of A.P., Secretariat, Hyderabad
2. The Director General of Police Saifabad, Hyderabad.
3. Commissioner of Police, Near City Civil Courts, Hyderabad.
4. Inspector of Police Karkhana P.S. Secunderabad
5. Chandra Rao, Inspector of Police Task Force, Central Crime Station, Near Public Gardens, Hyderabad.
6. Goverdhan Reddy, SI of Police , Task Force, Central Crime Station, Near Public Gradens, Hyderabad.
7. Ajaya Kumar S.I. of Police , Task Force, Central Crime Station, Near Public Gardens, Hyderabad.
8. Sivarama Krishna, S.I.of Police, Task Force, Central Crime Station Near Public Gardens, Hyderabad.
9. Varahalaraju , SI of Police Task Force, Central Crime Station Near Public Gardens, Hyderabad.
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